K

1945

File No. Rationing
II /45 Part II

Legal Department

B **BRANCH**

Subject:—

'Regulations and Notifications under the 'Bombay Rationing Order, 1943

[For previous pps: pl. see pt. I]

(1)

22.
1945

File No. Rationing II /45 part II

Gen. 194 e.

40-B

Pt. II

Office of the R.L.A.

1. A revised draft is sent herewith.

2. The draft is suitable for amending all Rationing Regulations similar to the "Model Rationing Regulation for Small Towns". C.R. should verify that the Small Town Rationing Regulations to be specified in the Schedule of the draft do not already contain a provision on the lines of the proposed new clause or a clause numbered "4A".

Id/-

P.N.M.

Remembrancer of t Legal Affairs.

U.R. to C.R. No.5213, dated 16th July 1945.

R.D.P.
16/7/56

S.C.

1817

R.O.R.
1817

Notification.

Finance Department (Supply),
Bombay Castle, 1945.

Bombay Rationing Order, 1943.

No.169/D.R. — In pursuance of clause 12 of the Bombay Rationing Order, 1943, the Government of Bombay is pleased to amend the Rationing Regulations specified in the Schedule hereto annexed as follows, namely:-

After clause 4 of each of the said regulation the following new clause shall be inserted, namely:-

"4A. No person shall without lawful authority alter any entry on a ration document. If any unauthorised alteration is made on a ration document affecting its validity or the quantity of rationed articles obtainable on it the holder of such ration document, or , in the absence of the holder from the said area, the person managing the household of which such holder is a member or the person managing the establishment of such holder, as the case may be, shall forthwith report the fact to the Rationing Office

SCHEDULE.

(89 Small Town Rationing Regulations).

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
16/7/56

S.C.

R.I.No.6251 dated 24.7.45.

Submitted with reference to the C. of R's office note at page 28 ante and Govt. of India letter at page 25 ante, which is a reply got by the C. of R. in pursuance of our U.R.No.3648,dated 11-5-1945.

2. The present reference has its origin in the proposal of the C.of R. to amend the Bombay Rationing Order, 1943 with a view to provide for the calling of deposits and its forfeiture under certain circumstances. This proposal was disapproved by U.R.No.3371,dated 9-5-1944 wherein it was held that the rule 81 under which the B.R.O.1943 was made does not enable Govt. to make any order providing for payments of deposits and their forfeiture on the happening of certain events. Consequently no legal authority can be given to the undertaking regarding forfeiture of deposits. It may be recalled that security deposits were taken by the C.of R. from the authorised establishment in Bombay informally without any legal sanction, of which the Govt. of India had inquired by letter No.R.F.C.139, dated the 19th February 1945. While opining on the ~~xxxxx~~ fate of such deposits it was held that if an amount is deposited by an authorised retail distributor and a ~~xxxxx~~ bond ~~xxx~~ executed by him agreeing to the forfeiture of the amount for breach of any of the stipulations of bonds, the forfeiture of the deposit would not be governed by the provisions of section 74 of the Indian Contract Act,1872 but if reasonable in amount would be treated as valid according to the decision in I.L.R.29 Madras 118. (U.R.No.4940, dated 13.7.1944) which was subsequently supported in U.R. No.1882,dated 9.3.1945.

3. No sooner the lastly noted reference had reached the C.of R's office than the C.of R. received a letter No. R.F.C.139,dated the 13th March 1945 from the Govt. of India stating that Govt. of India are advised that it would be open to an authority competent to make an order under sub-rule (2) of rule 81 of the D.of I. Rules to

embody in the order provision with the effect of rendering the grant of a license or permit conditional on the deposits of security or the execution of the bond. The case again made way back to the L.D. with the Govt. of India letter No.R.P.C 139, dated the 13th March 1945 for further consideration in the light of the aforesaid Govt. of India's remarks whereupon we asked the C.of R. to obtain a complete copy of the Govt. Of India ruling on the question of taking deposits and their forfeiture. (U.R. No.3648,dated 11-5-1945). The C.of R. has sent the Govt. of India, Department of Food, letter No.R.T.1915/25,dated nil July 1945, with the form appended thereto, for the advice of the R-L.A. whether the view taken by the Govt. of India is correct.

4. The point for R.L.A's consideration is whether a provision can be made in the Bombay Rationing Order, 1943, of of taking deposits and their forfeiture. No doubt the R.L.A. had upheld the taking of deposits and its forfeiture if reasonable in amount and if executed by a bond and was treated as valid according to the decision in I.L.R. 29 Madras 118, apart from the provisions of the B.R.O. 1943. Now the question comes of providing the same in the B.R.O. 1943, itself and the Govt. of India have advised the Chief Commissioner, Dehli that the proprietors of establishments should be required to make deposits and execute bonds by way of securities in the form at page 27 and the latter has issued an amendment under sub-rule(2) of rule 81 of the D. of I. Rules in the Dehli Rationing Order, 1944 to regularise the same. The opinion of the R.L.A. that rule of 81 of the D.of I. Rules does not enable Govt. to make any order providing for payments of deposits by any persons and their forfeiture on the happening of certain event, is in conflict with the opinion of the Govt. of India that it would be open to an authority competent to make an order under rule 81(2) of the D.of I. Rules to em-body in the order provisionx with the effect of rendering the grant

of a license or permit conditional on the deposits of security or the execution of the bond. I would like to hold the opinion of the Govt. of India to be correct. The following are the grounds of my holding --

(i) Reference is solicited to the D.S's note at p.356 of file No. Rationing II/44, He had explicitly stated that rule 81 enables regulating distribution and ~~xxxxxxxx~~ inter alia authorising proper distributing agencies; the authorisation can be ~~xxx~~ conditional or otherwise; a condition may be that the person to be authorised puts in a deposit and enters into a bond agreeing to forfeit it if he fails to conform to the law of rationing ..... The payment of deposit with the bond brings the forfeiture under contractual sanction. Non-payment of the deposit does not constitute a breach of rule 81 but only results in authorisation being refused. Thus the liability cannot be deemed to be created under the D.of I. rules, but one created under the contract.

(ii) If a rule can prescribe under what circumstances licenses can be granted, orders issued under any such rule can as well prescribe under what circumatances the license can be issued. Rule 81 of the D.of I. Rules is too wide to prescribe in details the circumstances under which licenses can be granged. In ~~x~~ its short stature it tries to embrace everything touching to the Defence of British India, the officient ~~x~~ prosecution of the war of for maintaining supplies and services essential to the life of the community. It is an enabling rule and there is nothing in the rule itself which has to be obeyed by ~~any~~ one. Bombay Rationing Order 1943 is made under this rule for regulating distribution of articles and for the due discharge of the duties it would be open to the Provincial Govt. to insert a condition in the order regarding the taking of deposits (if reasonable in amount) and its forfeiture in the event of licensee failing to observe the conditions of the licensee. "Such provision will be supplementary of and incidental to the provision of clause 3 of the B.R.O.

~~B.R.O.~~ 1943. For parallel views pl. see U.R.No.1631, dated 6-3-1943 and nothing thereunder.

(iii) There may arise many irregularities on the part of the licensee to comply with the provisions of the B.R.O. 1943, and if tried in any court of law would hardly stand conviction, under sub-rule(4) of rule 81. Nevertheless they can be conveniently cured by way of the forfeiture of deposits either wholly or partly, and the judgment of the Madras High Court in I.L.R. 29 Madras 113 is the best defence in such cases.

I(iv) Recently in Emperor versus Merwan Khodadas it is observed by the Bombay High Court that different considerations arise in different cases and what is not provided in the order is left to be dealt with by Regulation thereunder By analogy the observation can be applied in this present reference and it does not seem objectionable to provide matter in the order issued under the rule of which the rule is silent, if the matter is not prejudicial to it.

(v) Above observations go together in support of the view held by the Govt. of India (pages 5 and 25 ante.)

R.D.P.
16/7/56.
S.C.

Office of the R.L.A.

I can see no reason to revise my previous opinion
It is safer and better to take deposits and bonds on
an informal basis than under an amended Rationing
Order which may be liable to attack in Court.

Id/-

P.N.H.

9/5

Remembrancer of Legal Affairs.

C.R. to F.D.(Supply) No.6709,

dated the 13th September 1945.

R.D.P.
18/7/56

S.C.

Office of the R.L.A.

By Govern Notification in the Revenue Department No. 9823/33-III dated the 24th September 1945 issued under section 7 of the Bombay Land Revenue Code it has been directed that 47 villages specified in Schedule A to the Notification which formed part of the South Salsette taluka in the B.S.D. should with effect from 1-10-1945 be excluded therefrom and included in and form part of the Thana taluka in the Thana District. The result is that the revenue limits of the B.S.D. no longer contain the 47 villages excluded therefrom and any law which ordinarily applied to the B.S.D. will now apply to the B.S.D. minus the 47 villages excluded therefrom. The Bombay Rationing Order 1943, which was brought into force in the B.S.D. will accordingly apply with effect from 1-10-1945 to the BO.S.D. minus the 47 villages excluded therefrom. These 47 villages are included in and form part of Thana taluka which it is understood is a non-rationed area. Since the intention is that these villages should continue to be governed by the Bombay Rationing Order and the B.S.D. ~~ordinary~~ Rationing Regulation issued under clause 12 of the Order and similar B.S.D. orders, there is no objection to adopting the expedient suggested in para.4 of the R.O.(L)'s note viz. to add in such orders a definition of the B.S.D. to mean "the Bombay Suburban District as constituted immediately before the 1st day of October 1945". Some time will necessarily elapse between 1-10-1945 and the passing of an order inserting in the relevant orders the definition as proposed above. Care will have to be taken to see that no prosecutions are launched against any person in the 47 villages in question for any offence committed by him during this period.

Id/- P.N.M. 8/10/45

Remembrancer of Legal Affairs.

U.R. to C.R.'s office, No.7463 dated the 9th October 1945.

R.D.P. 16/7/56

C.

NOTIFICATION.

Finance Department (Supply),

Bombay Castle, October 1945.

Defence of India Rules.

No.C.R.68.- In exercise of the powers conferred by rule 81 of the Defence of India Rules, and of all other powers enabling it in this behalf, the Government of Bombay is pleased to amend the Bombay Rationing Order, 1943, as follows, namely:-

I. In clause 13 of the said Order the existing Explanations 1 and 2 shall be renumbered as 2 and 3 respectively and before the Explanations so renumbered, the following new Explanation shall be inserted, namely:-

"Explanation 1.- The person in respect of whom a ration document for household consumption is issued shall be deemed to be in the area if he is not absent from it for the whole of the week, fortnight or ration period, as the case may be, in which any coupon on such document is used."

II. With reference to sub-rule (1) of rule 119 of the Defence of India Rules, the Government of Bombay is pleased to directed that notice of the above Order should be given by the publication of the same in the Bombay Government Gazette and in the following newspapers, namely:-

1.

2.

3.

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
16/7/56
S.C.

Office of the R.L.A.

A revised draft Notification in place of the draft at page 13 ante is sent herewith.

Id/-

P.N.M.

3/11/45

Remembrancer of Legal Affairs.

U.R. to C.of R.No.8299,dated the 8th Nov. 1945.

R.D.P.
10/7/56

S.C.

Office of the R.L.A.

A revised draft direction is sent herewith.

2. Since it is proposed to issue a direction instead of making an amendment of the regulations, the reference to any other particulars of the transaction to be entered in the cash or credit memorandum has been deleted. Whatever other particulars are desired to be entered in such memorandum should be specified by an amendment of the direction whenever necessary.

3. The reference to "and when so required" in the second paragraph of the proposed direction is not understood. It is presumed that the distributor will be required to maintain true and correct accounts in the form specified by the Controller of Rationing or an officer authorised by him. The revised draft provides accordingly.

4. The draft sub-clauses (1A) and (1B) of clause 16/26 of the City of Bombay Rationing/Bombay Suburban District Regulation supplied with R.L.A's opinion No.8062, dated 17th November 194. provided that k those clauses shall not apply to distributors who are exempted. The revised direction also provides similarly.

Id/-

P.N.M.

10/12/45

Remembrancer of Legal Affairs.

U.R. to C. of R.,No.9284,dated 11th December 1945.

R.D.P.
16/7/56

S.C.

DRAFT DIRECTION.

No .- In exercise of the powers conferred by sub-clause (2) of clause 16 of the City of Bombay Rationing Regulation, 1943, and sub-clause(2) of clause 26 of the Bombay Suburban District Rationing Regulation, 1943, read with Government Notifications, Finnance Department (Supply), No.C.R. 68 and 69 dated 31st January 1944, the Controller of Rationing, Bombay, hereby issues the following direction, namely:-

Every authorised retail distributor dealing in foodgrains and sugar in the City of Bombay and the Bombay Suburban District unless exempted by the Controller of Rationing shall -

'1) when supplying any rationed foodgrains or sugar give the purchaser a correct cash or credit memornadum, as the case may be, specifying the distributor's name, address and authorisation number, the number of the ration document and the units specified thereon against which the supply is mx made, the date of the transaction, the quantity of the articles supplied and the amount charged, and shall keep a duplicate of ~~duplicate/~~ the ~~xxxxx~~ same; and

(2) maintain true and correct daily accounts in respect of his dealings in, and stocks of, the said articles in such form as the Controller of Rationing or an officer authorised by him in that behalf may specify.

Office of the Controller of Rationing, Royal Institute of Science Building) Bombay, 1945.) Controller of Rationing Bombay.

R.D.P. 16/7/56

S.C.

Office of the R.L.A.

It is not clear how a renewed card will differ from one originally issued except for the pasting of a slip thereon and how a card issued for the first time in the second year of rationing will differ from one issued for the first year. Sample cards issued for the first year, renewed for the second year and issued for the first time in the second year respectively should be furnished to facilitate scrutiny of the draft.

Id/-

8/10

for Remembrancer of Legal Affairs.

U.R. to the C. of R. No. 7405,

dated the 8th October 1945.

R.D.P.
16/7/56

S.C.

It will be seen from the letter of the Publi Prosecutor at page 1 ante that some persons come into possession of bread tickets issued to others and sell them to persons in charge of authorised manufacturing establishments. There is no provision in the Bombay Rationing Order or the Regulations made thereunder for roping in persons who acquire bread tickets from persons entitled there to and sell them to third parties. The C.R.'s office therefore proposes to amend clause 16 of the Bombay Rationing Order so as to make that, clause applicable to such persons. I think the ab object in view can be achieved by adding the fo following provision to existing clause 16,namely:-

"and no person shall use or dispose of a ration document except under and in accordance with the provisions prescribed by or under this Order".

The words "dispose of" are wide enough to attract the sale of ration documents. Reply may be:

A revised draft p.15 post Order is sent herewith.

P.N.M.
6/12/45
R. L. A.

R. L. A's Office.

A revised draft Order is sent herewith.

P.N.M. 7/12/45
Remembrancer of Legal Affairs.

G.R. to C.of R.No.9225,dated the 10th December '45
R.D.P. 16/7
C.5.

NOTIFICATION.

Finance Department (Supply),

Bombay Castle, December 1945.

Defencex of India Rules.

No.C.R.68.- In exercise of the powers conferred by rule 81 of the Defence of India Rules and of all other powers enabling it in this behalf, the Government of Bombay is pleased to amend the Bombay Rationing Order, 1943, as follows, namely:-

To clause 16 of the said Order the following shall be added, namely:-

"and no person shall use or dispose of a ration document or obtain such document except under and in accordance with the provisions prescribed by or under this Order"

With reference to sub-rule (1) of the rule 119 of the Defence of India Rules, the Government of Bombay is pleased to direct that notice of the above Order should be given by -

(a) publication of the same in the Bombay Government Gazette,

(b) issue of a Press Note explaining its object,

(c) publication of the same in the following news papers, namely:-

(1)

(2)

(3)

(d) forwarding copies of the same to the following Associations of authorised distributors and establishments, namely:-

(1)

(2)

(3)

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
16/7/56
5.C.

Office of the R.L.A.

A revised draft of the amendments is sent herewith.

2. Sub-clause(1) of new clause 3 which F.D.(S.) proposes to substitute for the existing sub-clause empowers the Provincial Government to issue an authorisation to any person with a view to controlling the distribution of any rationed article or food prepared from any rationed article. Although the new clause purports to control the distribution of food prepared from a rationed article, there is no provision made for controlling distribution of such food. Unless food prepared from a rationed article is also declared to be a rationed article and provisions are made for controlling the distribution of such food, it would not be proper to make reference in the Rationing Order to the distribution of food prepared from any rationed article. The revised draft does not therefore contain any reference to the distribution of food prepared from rationed articles.

3. As regards sub-clause (3) which F.D.(S.) proposes to add to clauses 3 and 10 of the Order, the object in view can be achieved by inserting a provision on the lines of sub-clause (2) of clause 6 of the Foodgrains control Order, 1942, referred to in the H.D.(L)'s note at pages 25-26 ante. The revised draft Order provides accordingly.

4. It appears from the F.D.(S.) notes at pages 26-27 ante that authorisations and permits are issued to establishment for a definite period and are renewed from time to time. The power to issue an authorisation is conferred by clause 3 of the Bombay Rationing Order. Under that clause it is in the absolute discretion of the Provincial Government or the authorised officer to issue an authorisation to any person being a wholesale dealer, retail dealer or having charge of an establishment to supply any rationed article. Must contain a power to refuse an authorisation The power to grant an authrisation if this is deemed to be expedient (see (1944) I.L.R. Mad. 448). If, therefore, Government or the authorised officer, for any reason which it or he considers proper, refuses to issue an ~~authorisat~~

authorisation to any person or refuses to renew it, such refusal cannot be challenged in a court of law. It is likely to be held that regulation 19 of the City of Bombay Rationing Regulation, 1943, implies that a person in charge of an authorised establishment is entitled to a ration permit, but if an authorisation is refused to him or is not renewed, he will not be entitled to any ration permit. The better course would therefore be to refuse to renew an authorisation and on such refusal the question whether it would be competent to refuse to renew the ration permit of an establishment will not arise.

Id/-

P.M.M.

21/12/45.

Remembrancer of Legal Affairs.

U.R. to C.of R.,No.9599,Dated 21 st December 1945.

R.D.P.
16/7/53.
S.C.

NOTIFICATION.

Finance Department (Supply),
Bombay Castle, December 1945.

Defence of India Rules.

No.C.R.68.- In exercise of the powers conferred by rule 81 of the Defence of India Rules and of all other powers enabling it in this behalf, the Government of Bombay is pleased to amend the Bombay Rationing Order, 1943, as follows, namely:-

1. To clause 3 of the said Order the following new sub-clause shall be added, namely:-

"(3) Notwithstanding anything contained in this clause, the Provincial Government or the authorised officer may, without giving any previous notice or without assigning any reason, suspend or rescind the authorisation issued under this clause."

2. To clause 10 of the said Order the following new sub-clause shall be added, namely:-

"(3) Notwithstanding anything contained in this clause the Provincial Government or the authorised Officer may, without giving any previous notice or without assigning, any reason suspend or rescind the ration document issued to an authorised distributor or establishment under this clause."

With reference to sub-rule (1) of rule 119 of the Defence of India Rules, the Government of Bombay is pleased to direct that notice of the above Order should be given by --

(a) publication of the same in the Bombay Government Gazette; and

(b) publication of the same in the following newspapers, namely:-

(1)
(2)
(3)

By order of the Gov

(b) publication of the same in the following newspapers, namely:-

(1)
(2)
(3)

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
16/7/56.
S.C.

Notification.
Finance Department (Supply),
Bombay Castle, July 1945.

Bombay Rationing Order, 1943.

No. In pursuance of clause 12 of the Bombay Rationing Order, 1943, the Government of Bombay is pleased to amend each of the Rationing Regulations specified in the schedule hereto appended, as follows, namely:-

In each of the said Regulations -

1. After clause 7, the following shall be inserted, namely:-

"7A. Any person not holding a ration card who resides in such village outside the said area/areas and during such period, as may be notified by the District Magistrate in this behalf, if he is not included in any household for which a ration card is issued and desires to have a ration card issued either for himself or on behalf of his household shall apply to the Rationing Officer furnishing true and correct information in such form as the Rationing Officer may require. The Rationing Officer may make or cause to be made such inquiry as he deems fit for verification of the the information furnished by the applicant."

2. In clause 12, -

(a) in sub-clause (1) after the word and fi figure "clause 7", the words figure and letter "or clause 7A" shall be inserted; and

(b) after sub-clause (2), the following shall be inserted, namely:-

"Provided that no ration card shall be issued under this clause on an application under ~~xxxxdx~~ clause 7A unless the Rationing Officer is satisfied that the persons in respect of whom the application is made would

ordinarily have resided in the said
area
areas
area(s)"

3. In sub-clauses (1) and (2) of clause 14 after the word "area" areas area(s) the following shall be inserted, namely:-

"or village notified under clause 7A, as the case may be."

4. After clause 14, the following shall be inserted, namely:-

"14A. The provisions of sub-clauses (1) and (2) of clause 14 shall not apply to the holder of a ration card changing his place of residence from or to the said area to or from any village and during any period notified by the District Magistrate under clause 7A."

Schedule.

* * * * Here specify the Regulations.

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
16/7/56.
5.C.

Office of the R.L.A.

It seems to me that the simplest way would be to extend the area to which the Rationing Regulation applies by includin the villages. This would save all further amendment. Ration card holders will automatically draw their rations even if sta ing in the villages as they would still be within the Rationed Area. The villagers would of course become eligible for ratio cards, and they would get coupons cancelled against their stoc (vide clause 6). But perhaps this would cause administrative inconvenience.

2. Under the Bombay Rationing Order as at present framed, it will not be legally feasible for the ~~mechanised~~ Authorised Retail Distribu- tor to run a shop as such outside the 'rationed area'. C.R. suggests that the A.R.D.'s should have 'distribution centres' in the villages. This would be legally in order, provided the sale of the rationed articles takes place in the rationed area and the distribution is merely in the nature of a delivery ser vice in respect of such articles (cf.B.R.O. clause 13(b)(i)). R.L.A.'s opinion (U.R. to F.D.(S) No.593 dated 22-1-1944) can be distinguished. An A.R.D., may not supply articles outside the rationed area qua R.R.D., although he may set up a shop ou side the area; but a person residing outside such area may purchase rationed articles from an A.R.D. within the area, and on being permitted to export them take them out of it. When a A.R.D. sets up a shop outside the rationed area, it will not b possible to control him under the B.R.O. as its provisions wil not be in force where the shop is located.

3. A revised draft Order is however sent herewith and may issue if it is considered to be a satisfactory arrangement that card holders ~~M~~ should obtain their rations within the rationed areas.

4. The question whether the difficulty cannot be more conveniently overcome by amendment of the Bombay Rationing Order, 194 enabling a regulation to be made to cover such ~~cases is under separate consideration.~~

~~Ld/- P.N.M. 10/8/45.~~

cases is under separate consideration.

Id/-

P.N.M.

10/8/45.

Remembrancer of Legal Affairs.

U.R. to C.R.'Office,No.6011,dated 13th August 1945.

A

R.D.P.
17/7/56
S.C.

Office of the R.L.A.

Attention is invited to para.4 of R.L.A.'s opinion No.6011 dated 13th August 1945. To overcome the difficulty referred to in the R.L.A.'s opinion it would be necessary to authorise an A.R.D. to supply rationed and articles outside the rationed area. If F.D.(Supply) sees no objection to an authorised retail dealer running a shop outside the rationed area for the supply of rationed articles, clause 3 of the Bombay Rationing Order may be amended by inserting the words "whether rationing has been introduced therein or not" after the words "in such area". Similarly clause 13(b)(i) may be amended by adding the following to that clause, namely:

"or if the District Magistrate so notifies, in such village outside the said area and during such period as may be specified in such notification."

If under the amendment as suggested above a dealer is authorised to set x up a shop outside the rationed area for the supply of rationed articles it would not be possible to control him under the Bombay Rationing Order but in the exceptional circumstances of the case it is presumed that the F.D.(Supply) will not insist that the dealer should be subjected to such control.

Id/-

P.N.M.

27/12/45

Remembrancer of Legal Affairs.

U.R. to the C.of R's office No. 9693,

dated the 28th December 1945.

R.D.P.
17/7/56

S.C.